

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ASHLEY TECHNER,

Plaintiff,

v.

Case No. 11-14722

Honorable Patrick J. Duggan

HELEN GREENBERG,

Defendant.

OPINION AND ORDER ON REMAND

This matter currently is before the Court on remand from the Sixth Circuit Court of Appeals.

On August 29, 2012, following a bench trial, this Court entered a decision finding Defendant Helen Greenberg (“Greenberg”) liable to Plaintiff Ashley Techner (“Techner”) for breach of contract and breach of fiduciary duties based on wrongful distributions made by Greenberg Properties Limited Partnership (“Greenberg Properties”) to its members. (ECF No. 30.) Although wrongful distributions were made from approximately February 2003 through June 1, 2009, this Court limited the damages Techner was entitled to recover to the period from May 1, 2005 through June 1, 2009, having found that Michigan Compiled Laws Sections 450.4404(6) and 450.4515(1)(e) barred Techner from recovering damages for distributions made more than six years before the filing of her complaint. In a judgment entered August 29, 2012, the Court awarded Techner damages in the amount of \$59,391.28. Techner appealed the damages

order, arguing that the Court erred in finding that she could not recover for an earlier period.

In a decision filed January 15, 2014, the Sixth Circuit Court of Appeals agreed with Techner and held that Techner was entitled to recover damages under her breach of fiduciary duty claim for wrongful distributions made more than six years before she filed her lawsuit. In other words, the appellate court concluded that Techner should be awarded damages based on all wrongful distributions. The Sixth Circuit therefore affirmed in part and reversed in part this Court's judgment and remanded the matter for recalculation of the appropriate damages amount in accordance with its decision. The Sixth Circuit issued its mandate in this case on February 18, 2014. (ECF No. 96.)

On March 11, 2014, Techner filed a brief regarding damages on remand. (ECF No. 98.) Before filing the brief, Techner's counsel sent a letter to Greenberg's counsel, proposing a recalculation of damages based on stipulated exhibits admitted during the bench trial and a stipulated judgment reflecting this recalculation. (*Id.* Ex. 1.) Neither Greenberg nor her counsel responded to the letter. (*See* ECF No. 98 at Pg ID 1163.) Additionally, neither Greenberg nor her counsel filed a response to Techner's brief, despite being served with it via the Court's electronic filing system. (*Id.* at Pg ID 1166.)

As set forth in Techner's brief, at the bench trial, Techner had introduced two exhibits relating to her damages:

Exhibit 19: Schedules prepared by Techner's accounting expert in a previous lawsuit detailing the distributions from Greenberg Properties and the amounts that should have been paid to Techner through the Ashley Greenberg Trust pursuant to Greenberg Properties' Operating Agreement; and

Exhibit 20: A spreadsheet setting forth the current value of the unpaid distributions.

(See ECF No. 30 [Bench Opinion] at 4.) Greenberg's counsel had stipulated to the admission of these exhibits, as well as the accuracy of the calculations contained therein. (See 6/26/12 Trial Tr. at 5-6; ECF No. 25 at 10.) On remand, Techner's counsel has updated Exhibit 20 to include Techner's damages before May 1, 2005. (ECF No. 98 Ex. 1.) Counsel indicates that the revision of Exhibit 20 takes the distribution information previously contained on Exhibit 19 and calculates interest on the distributions. (*Id.*) According to these calculations, Plaintiffs is entitled to additional damages of \$129,829.20, for a total judgment amount of \$189,220.48.

Based on Techner's current submission, as well as the parties' previous stipulations, this Court concludes that the calculation submitted by Techner is correct. The Court therefore is entering a revised judgment to reflect the appropriate damages that should be awarded Techner in accordance with the Sixth Circuit's January 15, 2014 decision.

SO ORDERED.

Dated: April 11, 2014

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

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